IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE MARTIN'S AQUARIUM, INC. Debtor	)	Civil Action No. 00-4735
JOEL M. and LOIS ZISHOLTZ, Appellants, v. ROBERT and RHONA GOLDSTEIN, and ARTHUR LIEBERSOHN, Trustee Appellees	)	

MEMORANDUM

Padova, J. **January , 2001**

This is an appeal from Order of the Bankruptcy Court for the Eastern District of Pennsylvania, issued on August 14, 2000. The matter is fully briefed and ripe for decision. For the reasons that follow, the Court vacates the Order of the Bankruptcy Court for the Eastern District of Pennsylvania, and remands the case for consideration not inconsistent with this Memorandum and Order.

I. Background

This is an appeal of an Order/Memorandum issued by the United States Bankruptcy Court for the Eastern District of Pennsylvania on August 14, 2000, in the adversary proceeding of Arthur Liebersohn, Trustee v. Zisholtz. The debtor in the underlying case was Martin's Aquarium, Inc., an entity owned by Joel and Lois Zisholtz and formerly engaged in the retail sale of fish and other pets.

In 1995, the Zisholtzes began discussions with Robert and Rhona Goldstein regarding the prospect of the Goldsteins becoming investors and partners. The Goldsteins ultimately invested, and Robert Goldstein began to work at Martin's Aquarium.

In early 1997, the Zisholtzes established Aquatic Design, an affiliated entity, to perform aquarium related services. In late 1997, Rhona Goldstein filed suit against Josel Zisholtz, Martin's Aquarium, Aquatic Design, and RPJ Associates, seeking to enjoin the allegedly improper transfer of the service business to Aquatic Design.

On February 3, 1998, the Goldsteins filed an involuntary Chapter 7 petition against Martin's Aquarium. The bankruptcy court stayed Mrs. Goldstein's 1997 state court suit. On June 16, 1998, Arthur Liebersohn, appointed Chapter 7 trustee for the Debtor estate, filed a complaint against the Debtor, the Zisholtzes, and Aquatic Design, for fraudulent conveyance of the service business. The Goldsteins participated in the action as a creditor. Judgment was entered against the Defendants, setting aside the transfer of the service business. On November 10, 1999, the bankruptcy court approved a negotiated settlement.[1]

In April 2000, with the settlement payment still outstanding and overdue, Mrs. Goldstein re-initiated her 1997 suit in state court, seeking $250,000 plus ownership of one-half of the real estate. On June 30, 2000, the Zisholtzes filed a motion to reopen the adversary proceeding in bankruptcy court. Following a hearing, Bankruptcy Court Judge David A. Scholl on August 14, 2000, dismissed the motion for lack of jurisdiction. Despite his lack of jurisdiction determination, Judge Scholl set

[1]Appellees indicate that, prior to approval of the settlement, they appeared to back out of the settlement, but that the bankruptcy court approved the settlement anyway. The key provision of the settlement provided for the Zisholtzes to pay $125,000 ($250,000 if a certain deadline was missed) to the Goldsteins.

forth in his memorandum a detailed list of factual findings, "in the interests of assisting the state court," that suggested the court would have ruled against Zisholtzes if it had jurisdiction. (Bankr. Ct. Ord. Aug. 14, 2000, at 4.)

Appellants filed this appeal seeking to reverse both the Bankruptcy Court's determination that it lacked jurisdiction, or, in the alternative, to vacate the factual findings section of the Bankruptcy Court's order. For the reasons that follow, the Order/Memorandum of the Bankruptcy Court is vacated in its entirety, and the case is remanded to the Bankruptcy Court for further proceedings.

II. Legal Standard

"In bankruptcy cases, the district court sits as an appellate court." In re Cohn, 54 F.3d 1108, 1113 (3d Cir. 1995). "As a proceeding tried initially before the Bankruptcy Court for the Eastern District of Pennsylvania, the standard of review for the district court is governed by [Federal Rule of Bankruptcy Procedure] 8013." Id. It provides:

> On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

Fed. R. Bankr. P. 8013 (Supp. 2000).

The district court "applies a clearly erroneous standard to findings of fact, conducts plenary review of conclusions of law, and must break down mixed question of law and fact, applying the appropriate standard to each component." Meridian Bank v. Alten, 958 F.2d 1226, 1229 (3d Cir. 1992) (quoting In re Sharon Steel Corp., 871 F.2d 1217, 1222 (3d Cir. 1989)). De novo review

requires the district court to make its own legal conclusions, "without deferential regard to those made by the bankruptcy court." Fleet Consumer Discount Co. v. Graves, 156 B.R. 949, 954 (E.D. Pa. 1993), aff'd, 33 F.3d 242 (3d Cir. 1994).

III. Discussion

Reopening of a closed bankruptcy case is governed by 11 U.S.C. § 350(b), which provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C.A. § 350(b) (West 1993). Section 350(b) gives the bankruptcy judge broad discretion to weigh the equitable factors in each case and decide whether to reopen it. See In re Shondel, 950 F.2d 1301, 1304 (7th Cir. 1991). A decision by a bankruptcy court to reopen a case under § 350(b) is reviewed for abuse of discretion. Donaldson v. Bernstein, 104 F.3d 547, 551 (3d Cir. 1997).

At the threshold, Appellants ask this Court to overrule the Bankruptcy Court's initial determination that it lacked jurisdiction to reopen the case.[2] From examination of the Bankruptcy Court's opinion, this Court concludes that it cannot review the August 14 order for abuse of discretion, because it cannot determine the basis for the Bankruptcy Court's decision.[3] This Court

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[2]In their brief, Appellees contend that Appellants have not appealed the Bankruptcy Court's jurisdictional finding. (Appellees' Brief at 12.) Appellants have confused matters by failing to provide, in the "Statement of Issues on Appeal" section of their brief, an explicit statement that they appeal the jurisdictional finding. Nevertheless, the Court concludes that it is clear from other statements in Appellees' Brief that they seek to overturn both the jurisdictional finding and to vacate the factual findings section of the Bankruptcy Court's Order. (See Appellants' Brief at 19.)

[3]Bankruptcy Court Judge David Scholl concluded that:

> We decline the Movants' invitation to exercise our jurisdiction to grant the relief sought . . . . In our view, this . . . connection between the Motion and administration of the Debtor's case is too tenuous to constitute the requisite "conceivable effect" on the estate . . . . A further important factor in our

is unable to determine from the language of the opinion whether Judge Scholl exercised his discretion not to reopen the case under § 350(b), or whether he erroneously concluded that he lacked subject matter jurisdiction to consider reopening the case under § 350(b).[4]

For these reasons, the Court vacates the August 14 Order in its entirety, and remands this case to the Bankruptcy Court for a determination, consistent with the applicable standards, as to whether the Bankruptcy Court should re-open the case as requested by Appellants Robert and Rhona Goldstein. An appropriate Order follows.

> determination that we lack jurisdiction is that the Proceeding is closed, which weakens our jurisdictional hold on the underlying dispute.

(Bankr. Ct. Ord. at 3.)

[4]The Bankruptcy Court determined that the basis for reopening the case was too tenuous to the administration of the Debtor's case. (Bankr. Ct. Ord. at 3.) To the extent that Judge Scholl might have employed this analysis to determine there was a lack of subject matter jurisdiction, he erred as a matter of law. The rights of the parties here were sufficiently intertwined with the underlying bankruptcy so that the court was not to precluded from reasserting subject matter jurisdiction. See McCullough v. Chambers, No. 98-6344, 2000 U.S. Dist. LEXIS 5277, at *14 (E.D. Pa. Apr. 25, 2000). Furthermore, § 350(b) expressly authorizes a bankruptcy court to reopen closed cases under certain circumstances. Id., at *15. Thus, the question properly before the bankruptcy court in considering the motion to reopen was whether it would be appropriate to reopen the case under § 350(b).

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O R D E R

AND NOW, this day of January, 2001, upon consideration of the Brief of Appellants Joel and Lois Zisholtz (Doc. No. 3), the Brief of Appellees Robert and Rhona Goldstein (Doc. No. 4), and Appellants' Reply Brief (Doc. No. 7), **IT IS HEREBY ORDERED** that the Order of the United States Bankruptcy Court for the Eastern District of Pennsylvania entered August 14, 2000, in the above-captioned case is **VACATED**, and the case is **REMANDED** to the United States Bankruptcy Court for the Eastern District of Pennsylvania for proceedings not inconsistent with the accompanying Memorandum.

BY THE COURT:

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John R. Padova, J.